

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Edward Everett Brown, IV,

Plaintiff

v.

State of Nevada, et al.,

Defendants

Case No.: 2:23-cv-00250-APG-EJY

Order Dismissing and Closing Case

Plaintiff Edward Brown, IV, brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison or during his arrest or state criminal case. ECF No. 5. On April 23, 2023, I ordered Brown to file an amended complaint by May 26, 2023, and either pay the full \$402 filing fee for this action or file a fully complete application to proceed *in forma pauperis*. ECF No. 4. I warned Brown that the action could be dismissed if he failed to file an amended complaint by that deadline. *Id.* at 7. That deadline expired and Brown did not file an amended complaint, move for an extension, or otherwise respond.

I. Discussion

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court

1 order). In determining whether to dismiss an action on one of these grounds, I must consider:
2 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its
3 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
4 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
5 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*,
6 833 F.2d at 130).

7 The first two factors, the public's interest in expeditiously resolving this litigation and the
8 court's interest in managing its docket, weigh in favor of dismissal of Brown's claims. The third
9 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption
10 of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the
11 court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The
12 fourth factor—the public policy favoring disposition of cases on their merits—is greatly
13 outweighed by the factors favoring dismissal.


14 The fifth factor requires me to consider whether less drastic alternatives can be used to
15 correct the party's failure that brought about the court's need to consider dismissal. *See Yourish*
16 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
17 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
18 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002). Courts “need not exhaust every
19 sanction short of dismissal before finally dismissing a case, but must explore possible and
20 meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because
21 this action cannot realistically proceed until and unless Brown files an amended complaint, the
22 only alternative is to enter a second order setting another deadline. But the reality of repeating
23 an ignored order is that it often only delays the inevitable and squanders the court's finite

1 resources. The circumstances here do not indicate that this case will be an exception, e.g., there
2 is no showing that Brown needs additional time or evidence that he did not receive the screening
3 order. Setting another deadline is not a meaningful alternative given these circumstances. So the
4 fifth factor favors dismissal.

5 **II. Conclusion**

6 Having thoroughly considered these dismissal factors, I find that they weigh in favor of
7 dismissal. It is therefore ordered that this action is dismissed without prejudice based on Edward
8 Everett Brown, IV's failure to file an amended complaint and either pay the required filing fee or
9 file a fully complete application to proceed *in forma pauperis* in compliance with my May 24,
10 2023, order and for failure to state a claim. The Clerk of Court is directed to enter judgment
11 accordingly and close this case. No other documents may be filed in this now-closed case. If
12 Edward Brown wishes to pursue his claims, he must file a complaint in a new case and either pay
13 the required filing fee or properly apply for *in forma pauperis* status.

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15 Dated: June 23, 2023

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18 U.S. District Judge
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